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Globalization and its impact on the full enjoyment of all human rights

Report of the Secretary-General

Addendum

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I. Introduction

1. In its resolution 55/102 of 4 December 2000, the General Assembly took note of the preliminary report of the Secretary-General on globalization and its impact on the full enjoyment of all human rights (A/55/342) and requested the Secretary-General, taking into account the different views of Member States, to submit a comprehensive report on that subject to the Assembly at its fifty-sixth session.

2. Pursuant to that request, on 15 May 2001, the Office of the United Nations High Commissioner for Human Rights addressed a note verbale to Member States requesting their views on the subject. Responses were received and compiled in the report of the Secretary-General (A/56/254).

3. Two replies were received after the submission of the report, from Costa Rica and from Saudi Arabia. Those replies are contained in the present addendum to the report of the Secretary-General mentioned in paragraph 2 above.

II. Replies received from Governments

A. Costa Rica

1. From the perspective of the promotion and protection of human rights, does economic growth entail more equitable distribution of income, more and better jobs, rising wages, more gender equality and greater inclusiveness?

4. The Government of Costa Rica considers that the benefits of economic growth are not distributed equitably, while the costs are distributed unevenly. Developing countries are finding it difficult to meet this challenge.

5. In and of itself, economic growth does not entail more equitable distribution of income, more and better jobs, rising wages, more gender equality and greater inclusiveness.

6. An effort must be made to develop ethical and legal principles for the implementation of mechanisms to promote economic growth that will benefit everyone.

2. From the perspective of the promotion and protection of human rights, how can economic growth be channelled equitably to ensure the implementation of the right to development and fair and equal promotion of human well-being?

7. The Government of Costa Rica believes that States must begin by investing the fruits of economic growth in education. The more training citizens receive, the more opportunities they will have to find better jobs and earn better wages, especially in the context of globalization.

8. In addition, legal principles and norms must be in place to protect individuals. These principles and norms should include adequate and fair wages, trade-union freedom, measures to combat corruption, transparency in the handling of public monies and oversight of such funds to ensure that they are invested in the best way possible.

9. The role of private enterprise must not be overlooked. Measures must be taken to ensure that private companies contribute to the public treasury in a proportionate and just manner. This will ensure that the State has enough resources for infrastructure works, social security, education, and other investments which help to promote and protect human rights.

3. To what extent do the exceptions included under article XX of the General Agreement on Tariffs and Trade indicate a point of convergence between trade rules and international human rights law?

10. The Costa Rican Government considers that three of the exceptions set forth in article XX are especially relevant, namely:

> "Article XX. General Exceptions:
>
> ... nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:
>
> "(a) necessary to protect public morals;
>
> "(b) necessary to protect human, animal or plant life or health;
>
> "(j) essential to the acquisition or distribution of products in general or local short supply; provided that any such measures shall be consistent with the principle that all contracting parties are entitled to an equitable share of the international supply of such

products, and that any such measures which are inconsistent with the other provisions of the Agreement shall be discontinued as soon as the conditions giving rise to them have ceased to exist."

11. The above articles indicate that the convergence between these exceptions and human rights is minimal and is limited to cases involving health, life or extreme situations. A large number of economic, social and cultural rights are omitted.

4. Are the standards established under the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights ("the TRIPS Agreement") sufficient to provide comprehensive protection to the intellectual property of indigenous peoples and local communities? Can those rules be adapted or amended to ensure the promotion of the cultural rights of indigenous and other groups?

12. The Government of Costa Rica notes that the TRIPS Agreement governs issues relating to the protection of intellectual property rights, including copyright and related rights, trademarks, industrial designs and patents.

13. A patent is a legal mechanism whereby protection is provided for the invention of a given product or procedure over a 20-year period. In order to be patentable, an invention must be new, involve an inventive step and be capable of industrial application. Anyone who uses the invention must pay royalties to the patent holder.

14. With some exceptions, patents provide their holders with the legal means to prevent others, for a limited period of time, from making, using or selling the new invention.

15. Article 7, entitled "Objectives", states that the protection [and enforcement] of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

16. Patents may be obtained for any inventions, whether products or processes, in all fields of technology, for the benefit of producers and users of technological knowledge in the relevant field during the patent protection period. Once the patent expires, the invention enters the public domain.

17. There are three types of exceptions:

- Inventions, the prevention within their territory of the commercial exploitation of which is necessary in order to protect ordre public or morality, including to protect human, animal or plant life or health (article 27, para. 2);
- Diagnostic, therapeutic and surgical methods for the treatment of humans or animals (para. 3 (a));
- Certain inventions for the production of plants or animals (para. 3 (b)).

18. Under the TRIPS Agreement, patent rights are not absolute and may be subject to limitations or exceptions, including the following:

- The Agreement allows members to provide limited exceptions to the exclusive rights [conferred by a patent], provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner (article 30);
- The Agreement also allows members to authorize use by third parties (compulsory licensing) or for public non-commercial use (use by the Government) without authorization of the right holder.

19. The following are not patentable:

- Plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes (article 27, para. 3 (b));
- Diagnostic, therapeutic and surgical methods for the treatment of humans or animals (para. 3 (a)).

20. In other words, the development and production of certain types of animals and plants may be patented. since patent protection may only be provided for knowledge derived from genetic engineering, the vast store of knowledge possessed by indigenous and local communities is excluded.

21. The rules arising from the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) do not guarantee the intellectual property

rights of indigenous peoples and local communities. They cannot even be adapted so as to make this possible.

22. TRIPS is based on an individualistic concept of property as applied to intellectual property. This concept of individual property as it relates to intellectual property does not exist in many indigenous communities or even in other local communities.

23. The knowledge of indigenous peoples is based on tradition, on shared knowledge that is passed on from generation to generation without anyone claiming it as his or her own. This knowledge benefits the entire community and is transmitted freely over time. Patenting violates these principles, since patents are granted to individuals who then become the sole owners of the knowledge in question and are entitled to charge royalties for its use. This practice prevents it from being passed on from generation to generation and violates an important cultural practice.

24. Some of the dangers involved in this system for protecting intellectual property are:

- Destruction of community rights, knowledge, innovation and traditional lifestyles, and failure to recognize community knowledge systems. The criteria for patentability set forth in TRIPS, article 27, namely that an invention must be new, involve an inventive (i.e., not obvious) step and be capable of industrial application, imply that an identifiable person, i.e., the inventor, must be involved. From the outset, this excludes collective creations of local communities. By the same token, only inventions that generate profit are recognized. These criteria and the implications thereof are essential for appropriating life by reifying it;
- Unjust and inequitable usurpation of innovations and knowledge produced by local and indigenous communities;
- Creation of a new form of technological protectionism;
- Denial of access to traditional knowledge and medicine;
- Undermining of the traditions of local third world communities which freely exchange knowledge, information, materials and seeds, together with the introduction of concepts that are incompatible with their values and world views;
- Spreading of single-crop economies, resulting in the displacement of traditional crops or native species and a process of genetic erosion.

25. These risks are an affront to the survival and dignity of local communities, which have demonstrated in many ways, such as through their management of natural resources, that they have the potential to become sustainable societies. They also undermine human rights, including the right of citizens to participate in deciding what style of development they want to adopt. As a result, democracy becomes irrelevant in national and local settings.

5. The *Human Development Report 2000* of the United Nations Development Programme (UNDP) noted that in 1998, least developed countries, with 10 per cent of the world's population, accounted for only 0.4 per cent of global exports and received only $3 billion of the total $600 billion foreign direct investment flows. To what extent are these figures related to trade liberalization and financial deregulation? To what extent are they related to a failure to liberalize trade and deregulate finance effectively? What other factors lead to low rates of foreign direct investment? To what extent do the figures identify the benefits of globalization being shared unevenly or at different rates?

26. The Government of Costa Rica notes that the differences between the exports of developed and developing countries are not a recent phenomenon. The point is to ascertain whether trade liberalization and financial deregulation tend to widen the gap. Free trade is intended to promote exports, and that is why there has been a proliferation of free trade agreements, both bilateral and multilateral. There are many advantages to trade liberalization, but measures must be taken to ensure that enthusiasm for deregulating trade does not impair the rights of local producers.

27. Foreign direct investment can be encouraged in a number of ways. Political stability in the receiving country is one of the main factors attracting such investment. Globalization has made it necessary for transnational corporations to diversify their operations outside their own boundaries. A developing country

that invests in educating and training its citizens will be more attractive to transnational corporations. Thanks to its political stability and high literacy levels, Costa Rica has made the transition from being an agricultural country to becoming a producer of high-technology components such as microchips and software.

28. Deregulation also encourages foreign investment. History has shown that protectionism tends to scare off foreign investors.

6. A human rights approach to globalization would set the norms, standards and principles of human rights — in particular, popular participation in decision-making, equality and fairness, accountability, empowerment and non-discrimination — as the guide for globalization. How could a human rights approach to trade liberalization correct perceived inequalities in international trade and investment?

29. The Government of Costa Rica affirms that negotiations on free trade agreements should not only spell out the trade issues involved, but also address labour and environmental concerns. Consultations with all current and potential stakeholders, especially small-scale producers and farmers, must be viewed as an integral part of the process. Vulnerable groups must also be protected.

30. As mentioned above, no country should ever give preference to free trade over human rights. In their desire to compete on the international market and attract foreign investment, many countries neglect the labour rights of their workers and allow the irrational use of their natural resources.

31. Multinational corporations are complicit in these situations when they set up operations in such countries and indiscriminately exploit human and natural resources. This can be avoided by entering into agreements and establishing ethical standards designed to prevent such situations.

32. The Government of Costa Rica recently signed a Free Trade Agreement with the Government of Canada. Parallel to this, it signed an Agreement on Labour Cooperation and an Agreement on Environmental Cooperation. Some aspects of these agreements which might help to enrich the report of the Secretary-General of the United Nations are worth mentioning.

33. The preamble to the Agreement on Labour Cooperation establishes the determination of both Governments to create new employment opportunities and improve working conditions and living standards in their respective territories, and to protect, enhance and enforce basic workers' rights.

34. Article 1 refers, among others, to the objectives of improving working conditions and living standards in each party's territory and promoting compliance with and effective enforcement by each party of its labour laws. In general, the parties undertake to ensure that their respective labour laws safeguard a considerable number of principles and workers' rights.

35. In the Agreement on Environmental Cooperation, the Governments state that they are convinced of the importance of the conservation, protection and enhancement of the environment in their territories and the essential role of cooperation in those areas in achieving sustainable development for the well-being of present and future generations; they also recall that Canada and Costa Rica share a commitment to pursue policies which promote sustainable development, and that sound environmental management is an essential element of sustainable development.

36. A very important aspect of the Agreement on Environmental Cooperation is the fact that the parties recognize that it is inappropriate to relax environmental laws in order to encourage trade.

37. The articles of the Agreement stress that one of its main objectives is to promote sustainable development through mutually supportive environmental and economic policies. Article 3 states that with the aim of achieving high levels of environmental protection and compliance with its environmental laws, each party shall effectively enforce its environmental laws through appropriate governmental action. This article also states that each party shall ensure that judicial, quasi-judicial or administrative enforcement proceedings are available under its laws to sanction or remedy violations of its environmental laws.

38. It is important to stress that trade should be egalitarian and should not serve only the interests of large and economically powerful countries.

7. What are the links, if any, between globalization, trade liberalization and inequality?

39. The Government of Costa Rica believes that trade liberalization is just one of many facets of the globalization process. Poorly implemented trade liberalization can create inequalities among the countries that are directly or indirectly involved in it.

40. Inequalities may be caused by many factors, both external and domestic. One of the external factors is the foreign debt, a serious problem for the developing countries as it prevents them from achieving full and sustainable development. Some of the domestic factors that exacerbate inequalities in the globalization process are corruption, lack of education, social conflicts, concentration of wealth and arms sales.

8. What are the links, if any, between the processes of globalization and negative aspects of international trade such as trafficking in people, arms and the increase in international crime?

41. The Costa Rican Government feels that globalization has encouraged trafficking in people and arms and has led to an increase in international crime in general and drug trafficking in particular. These illicit activities are further facilitated by new technologies and modern means of communication.

42. However, these technologies should also be used to combat them.

43. Although the arms trade is not in itself illicit, there is a need to establish codes of conduct for the trade and transfer of arms.

9. What policies can be formulated to ensure the promotion and protection of human rights in this regard?

44. The Costa Rican Government believes that, aside from those mentioned earlier, the principle that should govern globalization is the inalienable worth of individual people, who are the source of all human rights and all social orders. People must always be an end, never a means; a subject, never an object, and certainly never a commercial product.

45. Globalization of the economy should be followed by globalization of genuine human rights. If globalization is to promote dignity and human rights and itself become consolidated and permanent, people must be at the centre of the effort, and their social, legal and cultural rights must be guaranteed.

46. At the present stage of globalization, workers need special protection, since the labour sector is the weakest link in the economic and financial chain.

10. What are the social costs — effects on workers' rights in particular — of schemes to attract foreign investment such as economic processing zones?

47. As regards guidelines for attracting foreign investment in globalization processes, the Costa Rican Government considers that social actors are most apprehensive about the possibility that labour might become just another item of merchandise, an object to be purchased, at the best price, in the "global village".

48. In a globalized and liberalized world where the goal is to maximize profits, investors usually look for those locations where their production costs will be low; thus, cheap labour proves to be a great attraction. This situation may be compounded by longer work days, flexitime, the deregulation of labour guarantees and rights, improper State oversight, corruption and an unreliable judicial system.

11. What is the effect, positive or negative, of the employment practices of transnational corporations on the enjoyment of the human rights of employees and their families?

49. The Government of Costa Rica notes that positive aspects include the fact that transnational corporations sometimes offer competitive wages and incentives to workers and their families. They often provide training both within and outside the country and help their employees continue studying and acquiring the skills they need.

50. The negative aspects have been mentioned above.

B. Saudi Arabia

1. Introduction

51. The Kingdom of Saudi Arabia believes that:

The generally held view is that the developing countries are prevented from enjoying the benefits of globalization by obstacles such as the weakness of the

institutional, human, financial and technical capabilities of those countries;

The issue of trade liberalization has overlooked the potentially adverse effects on the developing countries;

The World Trade Organization, which is the practical embodiment of one aspect of globalization, is beset by procedural and practical problems and is biased in favour of the developed countries. The Organization has ostensibly linked its activities with human rights issues and, instead of confining itself to focusing essentially on trade, has gone further than that. The Agreement establishing the Organization makes only a passing and indirect reference to the principles of human rights, thus giving the impression that there is some doubt as to the commitment of the Western countries to the establishment of a democratic international system that takes account of human rights;

The measures discussed by the World Trade Organization in connection with the granting of patents, particularly for plants and life forms, also have adverse effects. For example, the adoption of such measures has serious effects on food security and the right to food;

The question of trade liberalization must be balanced with trade programmes, operations and results and must clearly serve the countries of the developing world;

The mechanisms, bodies and sectors concerned with globalization must seriously address the issue of human rights in a substantive and democratic manner and adopt the tenor of the International Covenant on Economic, Social and Cultural Rights, in particular article 2, paragraph 1, thereof, whereby each State Party undertakes to take steps, to the maximum of its available resources, with a view to achieving the full realization of the rights recognized in the Covenant;

The adverse impact of globalization leads to the violation of many of the rights guaranteed in that Covenant and in the International Covenant on Civil and Political Rights, such as the right to life, the right to equality and non-discrimination, the right to an adequate standard of living and the right to work, together with the right to just and favourable conditions of work. The manifestations of globalization in the developing countries have an impact on the enjoyment of those rights and those countries are therefore unable to fulfil their international obligations in the field of human rights, even where they have a keen desire to improve their human rights situation. Global economic forces cannot therefore be left free to disregard international human rights law, as, whenever basic human rights criteria are involved, international law requires compliance with treaty obligations, such as trade commitments, provided that they are consistent with those criteria. Such obligations apply to all those aspects that have a bearing on the relationship between trade and human rights law;

The right to development is one of the rights proclaimed by the international community and recognized by the General Assembly of the United Nations and the Declaration on the Right to Development. If the forces of globalization were allowed to override the essential criteria for the exercise of that right, poverty, unemployment and social disintegration would probably become more acute and the comprehensive shifts and changes in the global economic system would alter the characteristics of social development in the developing countries. Consequently, it is incumbent on the proponents of globalization to consider how to control and overcome the practices and threats facing the developing countries and endeavour to mitigate the adverse effects of globalization;

On more than one occasion, the Secretary-General of the United Nations has affirmed the need to establish a balance between market forces and social needs. At the World Economic Forum in Davos, Switzerland, in 1999, he also affirmed the need for a "global compact" to achieve the best outcome for globalization while respecting basic human rights criteria. In his address to the Ministers of Trade at the third Ministerial Conference of the World Trade Organization in Seattle, he further urged the need to devote attention to disparities in the global trading system and made it clear that the only way to ensure market prosperity was to guarantee human rights;

The indivisibility of human rights should be at the core of globalization. Although the Committee on Economic, Social and Cultural Rights does not regard globalization as such as being incompatible with human rights, the emphasis on market forces without accompanying social guarantees has highlighted the fact that globalization disregards human rights criteria. There is an urgent need to reorganize the policies and

mechanisms for international trade, investment and finance, but the new system must not adopt a negative attitude to human rights issues. In other words, it is imperative to ensure that human rights, particularly with regard to issues of equality and non-discrimination, are central to the discussions and reflections of the bodies that make policies and administer the institutions that promote globalization, bearing in mind that there is a more balanced approach. Replies to some of the specific questions follow below.

2. Does the economic growth currently being experienced under globalization entail a fair distribution of wealth, higher wages and better employment opportunities?

52. The Government of Saudi Arabia believes that, at the global level, the industrialized countries will be the greatest beneficiaries. At the national level, the more advanced sectors of the economy that are able to compete will be the greatest beneficiaries in the developing countries. In general, the sectors or countries that have a competitive advantage and the ability to adapt to new situations will benefit.

3. How can economic growth be channelled so as to favour the human right to development?

The Government of Saudi Arabia considers that the developing countries must be allowed the flexibility that they need in accordance with the circumstances of their development. The next comprehensive trade negotiations must also focus on development situations and give the developing countries the opportunity to market their goods, such as textiles, agricultural products and raw materials, in the industrialized countries. Moreover, the industrialized countries must stop subsidizing agriculture and certain industrial products.

4. To what extent can the exceptions contained in article XX of the General Agreement on Tariffs and Trade (GATT) be regarded as a point of convergence between trade rules and human rights?

The Government of Saudi Arabia believes that the exceptions contained in article XX of GATT could be an important part of the linkages between human rights and global trade rules, provided that they are interpreted in a manner that scrupulously serves the objective for which they were formulated. The industrialized countries apply the exceptions that serve their interests and insist on doing so to the letter. In many instances, they use them against the interests of the developing countries, particularly in the fields of employment and the environment. As for the exceptions that might serve the developing countries, such as the protection of public morals and the conservation of non-renewable resources (such as petroleum), the industrialized countries interpret them very narrowly. Accordingly, the developing countries that are unable to request such exceptions and do not have the legal and commercial expertise to obtain them will be unable to benefit from them.